

# Folter Arzt: interrogation of prisoners in Austria in 1773

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When I described Genocidal Doctors in this *Journal* some years ago (*JRSM* 1999;92:590–593),<sup>1</sup> I meant doctors who conceived and conspired to exterminate hundreds or even hundreds of thousands of a specific population. When I now use the term *Folter Arzt*, or Torture Doctor, I do not mean a doctor who tortures; that is a *Folterknecht*. A ‘torture doctor’ was a state doctor who protected the prisoner at interrogations. Together with the prison doctor, he had to examine and approve the prisoner as fit, ensure that the torture did not exceed the prescribed limits, that death did not occur, and treat any injuries. I use the definition of the British Medical Association’s 1992 Sir Douglas Black Working Party:<sup>2</sup>

‘Torture is the deliberate, systematic or wanton infliction of physical and mental suffering by one or more persons acting alone or on the orders of an authority, to force another person to yield information, to make a confession, or for any other reason which is an outrage on personal dignity.’

I begin with torture<sup>3,4</sup> in late eighteenth century absolutist Austria,<sup>5</sup> when a *Folter Arzt* campaigned to abolish torture.

## TORTURE IN AUSTRIA

Austrian penal codes, such as the Golden Bull of 1356, Wormser 1498, Bamberg 1507, and Caroline (Charles V) 1532, all regulated torture.<sup>5</sup> The Theresiana of 1768–9 specified it as a ‘subsidiary means of eliciting truth’ in cases where conviction would have involved capital or severe corporal punishment. From the seventeenth century, jurists tried to replace the old Roman/Canon law of proof by using instead judicial evaluation not involving torture.<sup>6</sup> The enlightenment philosophers such as the Encyclopaedists were abolitionists.<sup>5</sup> Feudal states wanted to improve their image towards benign despotisms. Frederick the Great was influenced by Voltaire to stop ordinary torture in Prussia in 1740, but Catherine the Great’s Montesquieu-inspired attempts to abolish torture and serfdom in Russia did not succeed.<sup>5</sup> In 1789 the Eighth Amendment of the US Constitution banned cruel and unusual punishment.

Holy Roman Emperor Charles VI’s heiress, Maria Theresa, was born in Vienna in 1717. She married her cousin Francis, who became Emperor in 1745, so that she became Empress, Archduchess of Austria and Queen of Hungary and Bohemia. When Francis died in 1765 she became effectively joint ruler, until her death in 1780, with her eldest son Emperor Joseph II.

## FERDINAND EDLEN VON LEBER

Leber was born in 1727. His humble parents were a wigmaker and a wet-nurse, but he was able to qualify as a doctor in 1751 and became a professor of anatomy and surgery.<sup>78</sup> He wrote the *Instruction to the Theresian Code*, became Body-Surgeon to the Empress in 1776, and in 1757 was ordered to be *Folter Arzt*. This post he neither wanted nor enjoyed because he soon learnt ‘Even the innocent, overcome by the intensity of the pain, acknowledged crimes that they had never committed; whereas a real criminal, endowed with strong, almost unfeeling nerves, could defy even the most painful torture and falsely maintain his innocence.’ It is dangerous in a dictatorship to become a whistle-blower, and it was only in 1773 that he found a window of legal opportunity.

Two suspect criminals resisted ordinary torture and were ordered to have intercalary torture that was prolonged from one day up to two or three days. Before each torture a doctor’s certificate was needed. Leber seized his possibility and with the local town surgeon certified that the prisoners were *torturfähig* (capable of being tortured) *only* if allowed to recover from the first torture. The doctors emphasized that ‘not only in this specific case, but never should the torture be administered *intercaliter*. As well as carefully limiting their legal amendment merely to banning only one form of torture, the two physicians were careful to cover themselves by appealing to the Faculty of Medicine, who agreed, ‘torture practiced in this country with thumbscrew, press and rack should be practiced without danger to life and never *intercaliter*.’<sup>5</sup> Leber did not suffer for his intervention, continued as *Folter Arzt* until 1776, and died peacefully of a stroke in 1808.

Leber’s report forced the government to take legal advice. Most jurists recommended no change to the torture laws that preserved the power of the State, but a minority of three advised banning the *intercaliter* method. However,

Maria Theresa also received strong anti-torture advice from her confidant, Joseph von Sonnenfels.

### JOSEPH VON SONNENFELS

Sonnenfels was the third and last of an extraordinary family.<sup>7,9–11</sup> His grandfather Wurzbach Lipmann was Chief Rabbi of Brandenburg. Wurzbach's son Chayim Lipmann Perlin ['from Berlin'] immigrated to Austrian Moravia, where he was befriended by the Piarist secular Roman Catholic teaching order for his oriental scholarship. He became agent to Prince Dietrichstein in Nikolsburg and converted in the late 1730s, with a new name, Aloys Wiener. He saw his conversion as an essential to join, let alone succeed, in any profession. His change of religion was not from conviction and his wife never converted. He wrote *On Holy Communion*, a Hebrew Grammar in German and Latin, and was appointed Professor of Oriental Languages in Vienna, where he taught Hebrew, Samaritan, Chaldean and Syriac. Austria made him the juridical interpreter in Hebrew and ennobled him as von Sonnenfels.

Chayim's elder son, Joseph, was born in 1732 and baptized at age three. After an irregular education Joseph dropped his title in 1749 and enlisted as a private soldier. After five exciting years, by which time he had learnt nine languages and to write a pure (not an Austrian) German, he rose to corporal and left to study law and—inspired by Rousseau—to reform Austria with the Enlightenment. He practiced law and became a Mason, a member of literary societies and one of the first Viennese journalists. He edited the liberal periodical *Der Mann ohne Vorurteil* ('The Unprejudiced Man') for ten years from 1765, but failed to obtain the chair of German Literature.

His speech in honour of Maria Theresa's birthday in 1762 so impressed the nobility that he became Professor of Applied Political Science and Instructor at the Theresianum training college for bureaucrats. He published more than 150 books and pamphlets, mostly on mercantilism and populationism. The government and the Empress sought his intellect and literary skills. He became Literary Censor, Vice-Chairman of the Judicial Reforms Committee, and drafted the Austrian Codes of Civil Law of 1803 and 1811.

### SONNENFELS' CAMPAIGNS AGAINST TORTURE

In 1767 Sonnenfels attacked the barbarities of capital and corporal punishments. Moreover, in 1769 Chancellor Kaunitz banned a book with detailed illustrations of these tortures,<sup>12</sup> perhaps because graphic horrors of these official abuses might have given the Austrian government an unfavourable image abroad.

Sonnenfels never mentioned his Jewish origin, but was referred in government circles in Vienna as 'the Jew from Nikolsburg'. Even his political allies such as van Swieten and

Kaunitz disliked him as cantankerous, loquacious, pompous, tactless and vain. Court officials and priests denounced him for atheism and *lèse majesté*, because he was the foe of God-willed order. Anti-reformers blighted Liberalism by associating it with Sonnenfels as a Jewish characteristic.

Austrian anti-semitism was long-standing. Vienna's ghetto was destroyed in 1421; in 1669 Leopold I again expelled the Jews; and Maria Theresa expelled them from Bohemia in 1745. In 1777 she wrote 'In the future no Jew shall be allowed in Vienna without my special permission. I know of no greater plague than this race, which on account of its deceit, usury, and hoarding of money is driving my subjects to beggary. Therefore, as far as possible, the Jews are to be kept away and avoided.'<sup>9</sup> The Empress used to receive Jewish court factors behind a screen so that she would not be sullied by their physical proximity. Yet her anti-semitism was not racial but religious, by her descent from the arch-Catholic Queen Isabella of Spain. Maria Theresa always favoured Sonnenfels and enjoyed his total loyalty and frank advice, almost as an *enfant terrible*. Perhaps she regarded the conversion of this infidel as a triumph of the true Catholic faith. Throughout these years she protected him from his enemies and allowed him to write according to his principles even if he challenged existing institutions. 'While the freedom of teaching is an issue here, the teacher must always act with reasonable moderation.'

Yet by 1773, when the government was forced to re-open the torture problem, most provincial administrators and state councillors favoured abolition. In 1775 Sonnenfels was reprimanded for publishing a report on *Abolition of Torture*;<sup>13</sup> his offence was even worse for publishing it abroad, perhaps to evade censorship. The Empress turned the torture problem over to her son, Joseph II. 'I ask the emperor, who had studied law and, what is more, whose sense of justice, reason and love of humanity I trust, to decide this matter without my advice. I do not understand it at all and could act only by majority decision'. The Emperor and the Supreme Chancellor did advise her, and on 2 January 1776 she ordered the abolition of all forms of torture in Austria and made Sonnenfels a Court Councillor. He drafted for Joseph II his *Toleranzpatent* (Edict of Toleration) of 1781, which opened most posts to Protestants and sanctioned private religious services for recognized denominations. This liberal emperor also abolished serfdom in 1781 and the death penalty in 1787.

### AFTERWORD

I have recalled two little-known eighteenth century Austrians. Vienna then had the greatest medical school in the world, but Professor Leber was one of its least distinguished faculty. Indeed, his lectures might consist merely of his reading out from a textbook, or even asking

his deputy so to do. I have not seen his name in any non-medical history book. Yet there was one moment in his life that perhaps few of us have had, or will have, when his conscience drove him to rebel legally, wilfully and eventually successfully against a barbaric national practice.

Professor Sonnenfels used his intellectual, journalist, legal and literary skills to seize on Leber's initiative. His own curious power as a confidant of the Empress and Emperor liberalized Austria to the level of, say, Prussia or France by abolishing capital and corporal punishment, feudalism and torture.

Today presidents and prime ministers, whatever their merits, are automatically commemorated by statuary. Sonnenfels was honoured in his lifetime, but his grave is unknown. He too has his statue, however, outside Vienna City Hall, erected in the time of the anti-semitic mayor, Karl Lueger. The statue was removed by the Nazis in 1938 and restored in 1945: the University now has the Joseph von Sonnenfels Center for the Study of Public Law and Economics. Composers often honour their patrons. Bach wrote Brandenburg concertos and Goldberg variations. In 1804 Beethoven dedicated his third Eroica Symphony to Bonaparte for his supposed championship of liberal achievements after the French Revolution, then tore up his dedication when he learnt that Napoleon had made himself Emperor. I know of no evidence that Sonnenfels was interested in music or even knew the composer, but nevertheless Beethoven did dedicate his Piano Sonata in D major, opus 28 to Sonnenfels as a symbol of the Enlightenment.<sup>14</sup>

## CONCLUSION

The Vienna Academy of Medicine did not initiate opposition to human rights abuses in the 1770s but they did support their whistle-blowing members and a liberal

press campaign to badger the empress and emperor until they ordered humane reforms

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